Soo Lina v Ngu Chu Chiong (Chong Oi Khium Irene, co-respondent)

HIGH COURT (KUCHING) — DIVORCE PETITION NO KG9 OF 1991
ABDUL KADIR SULAIMAN J
28 MARCH 1994

Family Law *— Divorce — Marriage irretrievably broken down — Petitioner and respondent allege different facts to establish marriage had broken down irretrievably — Petitioner's reply to respondent's answer did not contain denial or admission on allegation of respondent that their marriage had irretrievably broken down as they had lived apart for a continuous period of at least two years immediately preceding presentation of the petition by petitioner — Whether so-called admission by petitioner entitled respondent to a decree — Law Reform (Marriage and Divorce) Act 1976 s 54(1)*

Family Law *— Divorce — Marriage irretrievably broken down — Petitioner and respondent allege different facts to establish marriage had broken down irretrievably — Petitioner to satisfy court at the trial of those facts presented in her petition — Law Reform (Marriage and Divorce) Act 1976 ss 53 & 54*

Family Law *— Divorce — Marriage irretrievably broken down — Petitioner and respondent allege different facts to establish marriage had broken down irretrievably — Respondent applied for order that proceedings be stayed and that he be at liberty to proceed on the prayer of the answer as an undefended suit — Petitioner had counterclaimed against co-respondent — Whether respondent may succeed in application — Whether court should hear evidence in a trial*

The petitioner and the respondent were judicially separated pursuant to a court order. The petition of the wife, filed on 25 January 1991, alleged three of the facts mentioned in s 54(1)(a)–(c) of the Law Reform (Marriage and Divorce) Act 1976 ('the Act') and included a prayer for damages against the co-respondent for alleged adultery with the respondent. In her affidavit in support of the petition, she deposed that both she and the respondent were separated since 7 December 1986 on the ground of unreasonable behaviour on the part of the respondent. In answer to the petition of the wife, the respondent denied all the allegations of facts put forward by the wife in her petition and by way of his answer pleaded that their marriage had irretrievably broken down as they had lived apart for a continuous period of at least two years immediately preceding the presentation of the petition of the wife, ie since 7 December 1986. Consequently, the respondent prayed for the dismissal of the petition, a stay of the proceedings of the petitioner's petition and the dissolution of their marriage based on his answer.

The petitioner filed her reply to the answer on other matters pleaded therein but it contained no denial or admission on the allegation that they had lived apart for that period of time as alleged by the husband. For remaining silent on the issue, the respondent contended that the petitioner had admitted to the alleged fact. The respondent

applied for an order that the proceedings arising from the prayer for dissolution of marriage contained in the petition be stayed and that the respondent be at liberty to proceed on the prayer of the answer as an undefended suit.

Held, dismissing the application:

(1) There is only one ground for divorce under the Act, ie on the ground that the marriage had irretrievably broken down. At the hearing of a petition for a divorce, the court is required to inquire into the facts alleged in the petition, as causing or leading to the breakdown of the marriage and if satisfied that the circumstances make it just and reasonable to do so, it should make a decree for the dissolution of the marriage. But it does not mean that the court hearing a petition for divorce should not hold the marriage to have broken down irretrievably unless the petitioner satisfied the court of one or more of those four listed facts.

(2) Here, the petitioner and the respondent allege different facts to establish that their marriage has broken down irretrievably. The respondent denied all the facts alleged by the petitioner. Therefore, if the petitioner wanted the court to make a decree for the dissolution of their marriage based on those facts presented in her petition, it was for her to satisfy the court, at the trial, that the circumstances made it just and reasonable to make such a decree having regard to her alleged facts as provided in ss 53 and 54 of the Act.

(3) As the petitioner in her reply to the answer did not make a denial or admission on the respondent's allegation that they had lived apart for that period of time, the respondent contended that the petitioner had admitted to the alleged fact. In the circumstances, the respondent had the onus to satisfy the court on the same principle. Therefore, the so-called admission by the petitioner that they had lived apart for a continuous period of at least two years immediately preceding the presentation of the petition would not entitle the respondent to a decree. The effect of granting the order sought by the respondent would amount to a provisional granting of the decree subject to the respondent proving those facts at the trial. The effect would also preclude the petitioner from adducing evidence to satisfy the court that the circumstances made it just and reasonable to grant her a decree asked for based on the facts alleged by her in the petition.

(4) In order to arrive at the correct decision, the court has to hear the evidence in a trial to satisfy itself as to the proof that the marriage had broken down irretrievably so as to permit it to grant a decree of dissolution of the marriage either on the evidence of the petitioner or that of the respondent. There was a triable issue in the petition of the petitioner which involved the claim for damages from the co-respondent.

Obiter:

(1) The mere fact that both parties have agreed on any one or more of those facts does not clothe the court with the power to make the decree for the dissolution. The court has to take into consideration other circumstances as mentioned in s 54(2) of the Act before it can exercise the power to grant the decree.

(2) The respondent in a petition for divorce need not file a separate petition to commence the proceedings. The answer to the petition of the petitioner would be regarded as the petition of the respondent for the purpose of obtaining relief under the Act. So, a respondent's answer to a petition which contained allegations of any of the four facts in s 54(1) as causing or leading to the breakdown of the marriage is a matter for the court to have regard to in determining the relief sought by the respondent as if his answer to the petition is a petition by him for the dissolution of his marriage with the original petitioner on the ground that the marriage had irretrievably broken down. This is to avoid a multiplicity of proceedings.

[Bahasa Malaysia summary

Pempetisyen dan responden telah berpisah secara kehakiman mengikut suatu perintah mahkamah. Petisyen isteri yang telah difailkan pada 25 Januari 1991, mengatakan tiga fakta yang dinyatakan di dalam s 54(1)(a)–(c) Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta itu') dan termasuk suatu permohonan untuk ganti rugi terhadap responden bersama kerana melakukan zina dengan responden. Di dalam afidavitnya yang menyokong petition itu, pempetisyen telah mendepos bahawa kedua-dua beliau dan responden telah berpisah sejak 7 Disember 1986 atas alasan kelakuan responden yang tidak munasabah. Menjawab kepada petisyen si isteri itu, responden telah menafikan kesemua pengataan fakta yang telah dikemukakan oleh si isteri di dalam petisyennya dan melalui jawapannya telah membuat pli bahawa perkahwinan mereka telah berpecah belah dengan tidak dapat lagi dipulihkan kerana mereka telah tinggal berasingan selama tempoh yang berterusan sekurang-kurangnya dua tahun sebelum sahaja penyerahan petisyen si isteri itu, iaitu sejak 7 Disember 1986. Oleh itu, responden telah memohon supaya petisyen itu ditolak, prosiding petisyen pempetisyen digantung dan supaya perkahwinan itu dibubarkan berdasarkan jawapannya.

Pempetisyen telah memfailkan jawapannya terhadap jawapan itu atas perkara lain yang telah dinyatakan di dalam jawapan itu tetapi ia tidak mengandungi sebarang penafian atau pengakuan atas pengataan bahawa mereka telah tinggal berasingan selama tempoh yang telah dikatakan oleh si suami. Responden mengatakan bahawa pempetisyen telah mengakui fakta itu apabila beliau tidak mengatakan apa-apa mengenainya. Reponden telah memohon untuk suatu perintah supaya prosiding yang timbul akibat permohonan untuk pembubaran

perkahwinan yang terkandung di dalam petisyen itu digantung dan supaya responden bebas bertindak atas permohonan di dalam jawapan itu sebagai suatu tindakan yang tidak dibela. A

Diputuskan, menolak permohonan itu:

(1) Hanya terdapat suatu alasan untuk perceraian di bawah Akta itu, iaitu atas alasan bahawa perkahwinan itu telah berpecah belah dengan tidak dapat lagi dipulihkan. Pada pendengaran petisyen untuk perceraian itu, mahkamah dikehendaki bertanya mengenai fakta-fakta yang dikatakan di dalam petisyen itu, sebagai mengakibatkan atau menyebabkan perkahwinan itu berpecah belah dan jika berpuas hati bahawa keadaan membuatnya adil dan munasabah supaya berbuat demikian, mahkamah semestinya membuat suatu dekri supaya perkahwinan itu dibubarkan. Tetapi ini tidak bermakna bahawa mahkamah yang mendengar petisyen perceraian itu tidak patut memutuskan bahawa perkahwinan itu telah berpecah belah dengan tidak dapat lagi dipulihkan sehingga pempetisyen memuaskan mahkamah mengenai satu atau lebih daripada empat fakta yang telah disenaraikan. B C D

(2) Di dalam kes ini, pempetisyen dan responden mengatakan fakta yang berlainan untuk menyatakan bahawa perkahwinan mereka telah berpecah belah dengan tidak dapat lagi dipulihkan. Responden menafikan kesemua fakta yang telah dikatakan oleh pempetisyen. Oleh itu, jika pempetisyen inginkan mahkamah membuat suatu dekri supaya perkahwinan itu dibubarkan berdasarkan fakta yang telah dikemukakan di dalam petisyennya, beliau perlulah memuaskan mahkamah, pada perbicaraan, bahawa keadaan membuatnya adil dan munasabah supaya suatu dekri yang sedemikian dibuat memandangkan kesemua fakta yang dikatakan seperti yang diperuntukkan di dalam ss 53 and 54 Akta itu. E F

(3) Oleh kerana pempetisyen tidak membuat penafian atau pengakuan di dalam jawapannya kepada jawapan responden yang menyatakan bahawa mereka telah tinggal berasingan selama tempoh itu, responden berhujah bahawa pempetisyen telah membuat pengakuan mengenai fakta itu. Di dalam keadaan sedemikian, responden memikul beban untuk memuaskan mahkamah atas prinsip yang sama. Oleh itu, pengakuan yang dikatakan dibuat oleh pempetisyen itu bahawa mereka telah tinggal berasingan selama tempoh yang berterusan sekurang-kurangnya dua tahun sebelum sahaja penyerahan petisyen itu tidak akan menjadikan responden berhak mendapat dekri itu. Kesan memberi perintah yang dipohon oleh responden sama seperti memberi dekri itu secara sementara tertakluk kepada responden membuktikan fakta itu pada perbicaraan. Ianya juga akan menghalang pempetisyen daripada mengemukakan keterangan untuk memuaskan mahkamah bahawa keadaan membuatnya adil dan munasabah supaya beliau diberi dekri yang diminta berdasarkan fakta yang dikatakan olehnya di dalam petisyennya. G H I

(4) Supaya dapat mencapai keputusan yang betul, mahkamah perlu mendengar keterangan di dalam suatu perbicaraan untuk memuaska dirinnya sendiri mengenai bukti bahawa perkahwinan itu telah berpecah belah dengan tidak dapat lagi dipulihkan dan ini membolehkan suatu dekri dibuat untuk membubarkan perkahwinan itu sama ada atas keterangan pempetisyen atau responden. Terdapat isu yang boleh dibicarakan di dalam petisyen yang dibawa oleh pempetisyen itu yang melibatkan tuntutan untuk ganti rugi daripada responden bersama.

Obiter:

(1) Hakikat semata-mata bahawa kedua-dua pihak telah bersetuju mengenai satu atau lebih daripada fakta itu tidak memberi mahkamah kuasa untuk membuat dekri untuk pembubaran itu. Mahkamah perlu mengambil kira keadaan lain yang dinyatakan di dalam s 54(2) Akta itu sebelum ia boleh menggunakan kuasanya untuk memberi dekri itu.

(2) Responden tidak perlu memfailkan suatu petisyen yang berasingan di dalam suatu petisyen perceraian untuk memulakan prosiding itu. Jawapan kepada petisyen pempetisyen dianggap sebagai petisyen responden untuk tujuan mendapat relif di bawah Akta itu. Oleh itu, jawapan responden kepada petisyen itu yang mengandungi pengataan mengenai mana-mana satu daripada empat fakta di dalam s 54(1) sebagai menyebabkan atau mengakibatkan perkahwinan itu berpecah belah merupakan suatu perkara untuk pertimbangan mahkamah apabila menentukan relif yang dituntut oleh responden seolah-olah jawapannya kepada petisyen itu merupakan suatu petisyen olehnya untuk membubarkan perkahwinannya dengan pempetisyen asal atas alasan bahawa perkahwinan itu telah berpecah belah dengan tidak dapat lagi dipulihkan. Ini akan menghindari daripada kepelbagaian prosiding.]

Notes

For cases on the irretrievable breaking down of marriages, see [1989] Mallal's Digest 844; [1990] Mallal's Digest 654–655 and [1991] Mallal's Digest 1171–1172.

Case referred to

1 *Grenfell v Grenfell* [1978] 1 All ER 561; [1977] 3 WLR 738 (distd)

Legislation referred to

Matrimonial Causes Act 1973 s 1(2) [GB]

Ernest Chua (*Ernest Chua & Co*) for the petitioner.
KH Lin (*Chong Brothers Advocates*) for the respondent.

Cur Adv Vult

Abdul Kadir Sulaiman J: This is an application by the respondent for an order that the proceedings arising from the prayer for dissolution of marriage contained in the petition be stayed and that the respondent be at liberty to proceed on the prayer of the answer as an undefended suit. The petition of the wife filed on 25 January 1991, alleges three of the facts as mentioned in s 54(1)(a)–(c) of the Law Reform (Marriage and Divorce) Act 1976 ('the Act') and includes a prayer for damages against the co-respondent for alleged adultery with the respondent. In her affidavit in support of the petition, she deposed that both the petitioner and the respondent were separated since 7 December 1986 on the ground of unreasonable behaviour on the part of the respondent. There is no allegation that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition, which is a fact listed in sub-s (1)(d) of the section.

In answer to the petition of the wife, the husband respondent denies all the allegations of facts put forward by the wife in her petition but by way of his answer pleads that their marriage has broken down irretrievably. The alleged fact as causing or leading to the breakdown of the marriage was that they both had lived apart for a continuous period of at least two years immediately preceding the presentation of the petition of the wife, ie since 7 December 1986, which is the same date given by the petitioner in her affidavit in support of the petition. Consequently, the respondent prays in his answer to the petition for the dismissal of the petition, the stay of the proceedings of the petitioner's petition, and the dissolution of their marriage based on his answer. The wife filed her reply to the answer of the husband on other matters pleaded therein but [it] contains no denial or admission on the allegation that they have lived apart for that period of time as alleged by the husband. For remaining silent on the issue, the respondent contends that the petitioner had admitted to the alleged fact.

The background leading to the petition and the answer is that prior to the filing of the petition by the wife, both parties were judicially separated pursuant to a court order of 14 June 1986. Since the date of the order, they have not resumed cohabitation and the decree has been continuously in force.

To arrive at the proper decision on this application of the respondent, it is best to have a look at the law relating to the matter. Under the Act, the power of the court to grant the dissolution of the marriage is covered in ss 53 and 54. There is only one ground for divorce under the Act. It is on the ground that the marriage had irretrievably broken down. At the hearing of a petition for divorce, the court is required to inquire into the facts alleged as causing or leading to the breakdown of the marriage and if satisfied that the circumstances make it just and reasonable to do so, it shall make a decree for the dissolution of the marriage. In other words, it is not dependent on the proof of any particular factual situation as is found in s 1(2) of the British Matrimonial Causes Act 1973 ('the British Act') to establish that the marriage has broken down irretrievably. What concerns the court is that it is to be satisfied after an inquiry into the facts and circumstances alleged in the petition as causing or leading to the breakdown

of the marriage, that it makes it just and reasonable to make a decree for the dissolution of the marriage. In such an inquiry the court is required to have regard to any one or more of the four facts listed in items (a)–(d) of s 54(1). By that it means that any one or more of those facts may assist the court in determining whether or not the marriage has broken down irretrievably. But it does not mean that the court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of those four listed facts. The requirement of the Act is, therefore, different from the provisions found in s 1(2) of the British Act which is as follows:

> The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say —
>
> (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
> (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
> (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
> (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Act referred to as 'two years' separation') and the respondent consents to a decree being granted;
> (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Act referred to as 'five years' separation').

The effect of the aforesaid sub-s (2) of the British Act is that the court cannot hold the marriage to have broken down irretrievably unless any one or more of the above-mentioned facts is proved by the petitioner. Once the petitioner has proved any one or more of those facts, a presumption will arise of the irretrievable breakdown of the marriage. The onus is on the party who alleges that the marriage has not irretrievably broken down. Whereas under the Act, the court is required only to have regard to one or more of the four facts listed in s 54(1), so that it may help the court in satisfying itself that the circumstances make it just and reasonable to make a decree for the dissolution of the marriage. However, if it should appear to the court that in all the circumstances, it would be wrong to dissolve the marriage even after the petitioner has established any one or more of those four facts mentioned in s 54(1), it shall dismiss the petition: see s 54(2) of the Act. Therefore, the mere fact that both parties have agreed on any one or more of those facts, does not clothe the court with the power to make the decree for the dissolution. The court has to take into consideration other circumstances as mentioned in s 54(2) of the Act before it can exercise the power to grant the decree.

By s 60 of the Act, the respondent in a petition for divorce need not file a separate petition to commence the proceedings. The answer he made to the petition of the petitioner would be regarded as the petition of the respondent for the purpose of obtaining a relief under the Act. So a

respondent's answer to a petition which contains allegations of any of the four facts as causing or leading to the breakdown of the marriage is a matter for the court to have regard to in determining the relief sought by the respondent as if his answer to the petition is a petition by him for the dissolution of his marriage with the original petitioner on the ground that the marriage has irretrievably broken down. This to my mind is to avoid a multiplicity of proceedings.

In this present case, both the petitioner and the respondent claim that their marriage has broken down irretrievably and they both want their marriage to be dissolved. The petitioner in her petition and the respondent in his answer to the petition allege different facts to establish that their marriage has broken down irretrievably. The husband respondent denies all the facts alleged by the wife petitioner. In the circumstances, if the petitioner wants the court to make a decree for the dissolution of their marriage based on those facts presented in her petition, it is for her to satisfy the court that the circumstances make it just and reasonable to make such a decree having regard to her alleged facts as provided in ss 53 and 54 of the Act. This she must do at the trial.

In regard to the allegation of fact by the respondent in his answer to the petition for supporting the ground of irretrievably broken down marriage, the wife petitioner was silent in her reply to the answer put forward by the respondent. She neither admits nor denies the allegation. In the circumstances the respondent has the onus to satisfy the court on the same principle. The respondent contends that by her silence, she is deemed to have admitted to those fact alleged by the respondent. Even if this is so, as stated above, it does not follow that the court as a matter of course will make a decree in his favour unless the court is satisfied that the circumstances make it just and reasonable to do so. The court will have to consider other factors as required by the Act to satisfy itself before granting the decree. Therefore merely on the basis of the so-called admission by the petitioner that they have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition will not entitle the respondent to a decree. The effect of granting the order sought by the respondent, would amount to a provisional granting of the decree subject to the respondent proving those facts at the trial. That is not the law of the land. The effect would also preclude the petitioner from adducing evidence to satisfy the court that the circumstances make it just and reasonable to grant her a decree asked for, based on the facts alleged by her in the petition. One of the facts alleged by her is that the respondent had committed adultery. In her petition, she has cited a co-respondent as a party on account of the allegation and she claims damages against the co-respondent. If she is prevented from defending and her petition is stayed, as prayed for by the respondent, how is she to establish the liability of the co-respondent in damages, as she is precluded from adducing evidence at the trial except for matters allowed by r 40 of the Divorce and Matrimonial Proceedings Rules 1980 ('the Rules'). The court is entitled to have regard to any one or more of the allegation of facts by the petitioner.

To enable the court to be appraised of the matter, there ought to be a full trial or inquiry into the matter in order to arrive at the satisfaction that the circumstances make it just and reasonable to make a decree for the dissolution of the marriage. After all, it was the wife who initiated the proceedings by her petition. It is not correct, therefore, as so submitted by the learned counsel for the applicant that it would serve no purpose to proceed with a full trial to enquire into the petitioner's allegation of adultery merely for the purpose of satisfying the feelings of the petitioner. I do not think in this respect that by refusing the application of the respondent, the petitioner is given the liberty to satisfy her feelings.

The respondent relies on the authority of *Grenfell v Grenfell*,[1] a decision of the Court of Appeal in England based on the British Act, in support of his application. On my part, in the light of the distinct requirement for the granting of a decree of dissolution of marriage between the provisions contained in the British Act and in our Act in regard to proof of irretrievable breaking down of the marriage as mentioned above, the case is distinguishable. In *Grenfell*'s case,[1] the fact that the marriage has broken down irretrievably is presumed the moment Mrs Grenfell admitted to the fact alleged by her husband, the respondent. Unless rebutted, the decree for the dissolution must be made by the court. Her objection on grounds of grave hardship to her if the cross-petition of the respondent for dissolution of the marriage is allowed cannot stand. She petitioned for a divorce but on the cross-petition for same, she was trying to resist after admitting to the fact alleged by the respondent. She gave the particulars of the alleged hardship as follows:

(1) she is of the Greek Orthodox faith; and
(2) as a practising Christian her conscience would be affronted if the marriage were to be dissolved otherwise than for grounds of substance whereby the true cause of the breakdown of the marriage will be determined by the court and the decree pronounced accordingly.

The Court of Appeal in that case had to consider whether the wife should be permitted to go on with the allegation of behaviour in her petition in view of what had happened. According to the court, by opposing the cross-petition, she was blowing hot and cold because in the first place she petitioned for divorce but by her opposition she was in effect protesting against the dissolution of the marriage on the ground of grave hardship to her. In giving the answer, the court at pp 566–567 had this to say:

> Parliament then went on in s 1(2) to prescribe five separate facts, one of which has to be established in order to prove that the marriage has broken down irretrievably ... On proof of any of those five (and Parliament plainly chose each of those five facts as being facts which would raise in any reasonable mind a presumption that the marriage had broken down) Parliament provided that the court shall grant a decree of divorce unless it is satisfied on all the evidence that the marriage has not broken down irretrievably. In other words, on proof of any one of the five facts, there is a presumption, rebuttable it is true, of irretrievable breakdown, and the onus is quite plainly on the party who is asserting that the marriage has not irretrievably broken down to satisfy the court by evidence that

> the presumption should be treated as rebutted. It is not, therefore, an adversary proceeding in any way comparable to the proceedings in other divisions of this court. Whichever side proves a fact under s 1(2) proves prima facie that the marriage has irretrievably broken down, and the court is not, in my judgment, concerned with anything else.
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> ... There is no point, as I see it, in a case like this in conducting an enquiry into behaviour merely to satisfy feelings, however genuinely and sincerely held by one or other of the parties. To do so would be a waste of time of the court and, in any event, would be running, as I think, counter to the general policy or philosophy of the divorce legislation as it stands today.

That is the position as regards the British Act. But as stated earlier, our Act is different from the British Act in determining that the marriage has broken down irretrievably. It is the petitioner in our case which initiates the petition for divorce alleging various grounds which the court under the Act has to take into consideration in arriving at the decision as to whether to grant the decree of dissolution sought. And the respondent by way of his answer to the petition by the wife also prays for the dissolution of the marriage but on a different alleged fact. In order to arrive at the correct decision in the matter, the court will have to hear the evidence in a trial to satisfy itself as to the proof that the marriage has broken down irretrievably so as to permit it to grant a decree of dissolution of the marriage either on the evidence of the petitioner or that of the respondent. There is a triable issue in the petition of the wife petitioner which involves the claim for damages from the co-respondent related to the petitioner's marriage with the respondent. If her petition is stayed then this issue remains. Claim for damages by a petitioner against a co-respondent is not a cause of action by itself. It is given by the Act. It is, therefore, ancillary to her petition for divorce. If her petition is ignored or stayed and the court proceeds with the hearing based on the answer of the respondent undefended, and if the respondent succeeds then a decree will be granted to him. In such a situation, how is the petitioner to proceed to prove damages against the co-respondent because the issue of the granting of the decree for dissolution of her marriage with the respondent had been decided and a decree made? In the circumstances, the application of the respondent by this summons-in-chambers must necessarily fail. I, therefore, dismiss the application with costs to the petitioner in any event. I further order that either of the parties apply under r 29 of the Rules for a summons for directions with a view to set down the petition for trial. Application dismissed with costs to the petitioner.

Application dismissed.

Reported by Jeanne Tan